

Exhibit 3 to the Intervention by Allarco Entertainment 2008 Inc.

Excerpts from the Affidavit of Donald Best

COURT FILE NO. 1903 24888

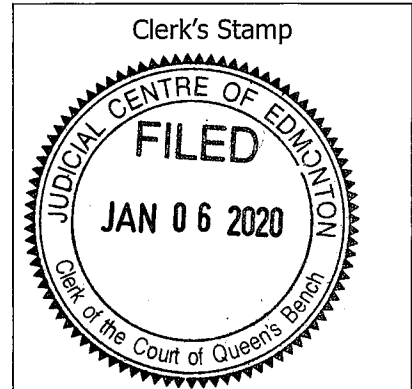
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ALLARCO ENTERTAINMENT 2008 INC.

DEFENDANTS STAPLES CANADA ULC, BEST BUY CANADA LTD., LONDON DRUGS LIMITED,  
CANADA COMPUTERS INC., JOHN DOE CUSTOMERS 1 TO 50,000,  
JOHN DOE SUPPLIERS 1 TO 100

DOCUMENT **AFFIDAVIT OF DONALD BEST**



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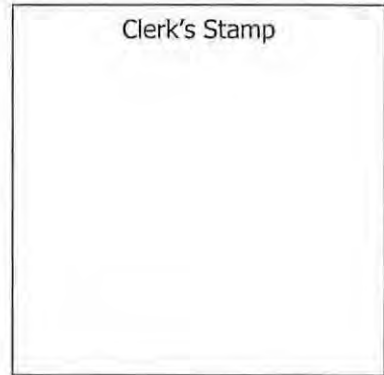
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**AFFIDAVIT DONALD BEST**  
**SWORN/AFFIRMED ON JANUARY 3, 2020**  
**VOLUME 1 OF 2**

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**AFFIDAVIT DONALD BEST  
SWORN ON JANUARY 3, 2020**

I, Donald Best, of Simcoe County, Ontario, SWEAR AND SAY THAT:

1. I am Donald Best, an employee of the Plaintiff in this case: Allarco Entertainment 2008 Inc., commonly known as Super Channel ('Super Channel') - a subscription-based premium cable, satellite, and streaming television service headquartered in Edmonton, Alberta.

2. My duties include co-ordination of anti-piracy efforts including public education, cultural change and copyright enforcement.
3. I am also a part-time independent documentary film producer and journalist with some credits in mainstream media.
4. My background in public and private sector investigations and law enforcement includes over 35 years of combined Toronto Police Service, private investigations and case management. In police service my rank was Sergeant (Detective). My investigative specialties are undercover operations, organized crime and fraud. In 1997 I was accredited as a Certified Fraud Examiner.
5. From about 1995 to 2005 I was heavily involved in the investigation of satellite piracy both as an undercover investigator and case manager for many related civil actions in Canada, including in the obtaining and execution of Anton Piller orders. The 2004 Supreme Court of Canada case 'Bell ExpressVu Limited Partnership v. Rex' which my client won was based upon my investigation, evidence, and case management.
6. I am a Canadian living in Simcoe County, Ontario and have family, children and grandchildren. I am the sole recipient of the 2018 Ontario Civil Liberties Award.

#### **Ongoing Investigations into Defendants' Continuing Copyright Piracy Activities**

7. In this affidavit I refer to the four main corporate defendants individually as 'Best Buy', 'Canada Computers', 'London Drugs', and 'Staples' which includes their websites and any other involved affiliated entities: known and yet to be identified. I refer to them jointly as '4Stores'.
8. It is important to note that undercover investigations continue into the 4Stores ongoing copyright piracy activities and thus my affidavit and the exhibits currently before the court do not contain some recently gathered evidence. For instance, in the days before this affidavit was sworn, pirate devices were purchased from various 4Stores defendants in their retail stores and online. These pirate devices have not yet been examined. Some online purchases have shipped from 4Stores but have not yet been received.
9. Nor does my affidavit contain the undercover and other evidence that I will most certainly continue to gather after my affidavit is sworn. Thus, the court and the 4Stores defendants can expect to receive further sworn affidavits, including various exhibits and digital evidence, concerning ongoing 4Stores copyright piracy activities.
10. Attached to my affidavit as **EXHIBIT OO (Hard Drive 1)** and **EXHIBIT PP (Hard Drive 2)** are two hard drives that contain digital evidence about the 4Stores case before the court.
11. As detailed in the affidavit of Steve Lewis, Hard Drive 1 was served upon the 4Stores lawyers on or about October 29, 2019. Hard Drive 2 was served upon the 4Stores lawyers on or about December 11, 2019.
12. EXHIBIT OO Hard Drive 1 contains true copies of original undercover audio and video recordings that I gathered during the 4Stores investigation to date, in a folder labelled '4Stores Undercover Recordings Master1'. The original undercover audio and video files are placed into a hierarchy of

folders starting with the 4Stores corporate names. For instance, all 'Best Buy' recordings are placed in the 'Best Buy' folder and then into folders indicating the date, store name, store number and/or location etc.

13. A folder on Hard Drive 1 labelled '1 Master1 Index' contains a 14-page PDF showing screen captures with the name and location of each electronic file on the hard drive.
14. EXHIBIT PP Hard Drive 2 contains digital copies of video files made during forensic examinations and demonstrations of various pirate devices purchased during the 4Stores investigation. As with Hard Drive 1, an index is provided, and the files are placed into a hierarchy of folders starting with the 4Stores corporate names. For instance, all 'Best Buy' recordings are placed in the 'Best Buy' folder and then into folders indicating the date, store name, store number and/or location etc.
15. The digital evidence on hard drives 1 and 2 is referenced and described in more detail throughout sections of my affidavit.

### **Devastating Impact Of Copyright Piracy On Canadian Broadcast & Content Creation Industries**

16. Since about 1995 I have been active in investigating copyright piracy and have been aware of the impact upon our Canadian broadcast and content creation industries.
17. Nothing in my previous experience, however, prepared me for the exponential proliferation of copyright piracy in the last five or so years, the widespread change in Canadian culture that approves of this stealing, and the devastation to our broadcast and content creation industries.
18. Copyright Content Piracy that used to be available only through personal meetings with satellite pirates in parking lots and bars is now weaponized against copyright holders and the broadcast industry through the use of Internet pirate devices and piracy techniques as promoted, sold and taught to Canadians by the 4Stores.
19. My observations are supported by many published studies and sworn testimony, some of which I attach as exhibits. I am aware of, and have complied with, the various rules and regulations regarding expert evidence that apply in courts across Canada.
20. From about 1995 to 2005 when I was investigating satellite piracy, I saw first-hand the impact of copyright piracy at that time in terms of lost revenues upon Canadian broadcasters. During one undercover operation in 2001 I saw that a London Ontario satellite pirating network collected over 4 million Canadian dollars in cash during just one 6-week period.
21. Contrast what I observed in 2001 with a piracy case in May 2019 in the Federal Court of Canada. Evidence showed that 'VaderStreams.ca' - one of the Canadian copyright piracy suppliers that 4Stores personnel recommended to me - had annual gross revenues of CDN\$1.72 billion dollars servicing 8 million piracy customers throughout Canada and the USA.
22. As recommended by various 4Stores personnel, I was a VaderStreams.CA customer (undercover). With 8 million subscribers each paying CDN\$53.73 for three months as I paid, the annual gross revenues of VaderStreams.ca amounted to CDN\$1.72 Billion dollars. Attached as **EXHIBIT A** -

XT802 – Variety article: Vader Streams Shut Down by Hollywood Studios. (NOTE: 'XT' numbers following the standard Exhibit numbers 'A', 'B' etc. are a reference to the affiant Donald Best's records and are provided herein should the court wish to see the originals.)

23. As indicated in the affidavit of Super Channel CEO DONALD MCDONALD, it is difficult to quantify the losses to the content creation and broadcasting industries. This observation was corroborated by a June 1, 2016 Federal Court of Canada 'Reasons For Order' where the Court stated:

*(a) The market for pre-loaded set-top boxes is rapidly and steadily growing, in a way that cannot be precisely quantified at the moment. The continuing sale of pre-loaded set-top boxes will "place devices in the hands of consumers which the plaintiffs, even if successful at trial, will not be able, in most cases, to locate or to effectively restrain" from accessing copyrighted content. Each user who purchases a pre-loaded set-top box has an incentive to permanently cancel his or her subscription to a distribution service. Attached as **EXHIBIT B** - XT801 – Federal Court of Canada Reasons for Order June 1, 2016: Bell Canada vs 1326030 Ontario Inc et al Citation 2016 FC 612.*

24. As shown in later sections of my affidavit and the attached exhibits, 4Stores management and sales personnel regularly promote as a benefit of the pirate devices they sell, that customers can stop cable service and access pirated copyrighted programming for free.
25. This anti-cable-company pirate activity is promoted in the most open manner in the 4Stores and even online. The Best Buy Canada official blog at 'BestBuy.CA' currently features an article 'Cord-cutting 101: How to Live without cable TV'. As of Wednesday, December 18, 2019, this article is current - still published on Best Buy's website, featured and linked to Best Buy's current pirate device offerings.
26. The article is a tutorial on how to use an Android TV box to pirate copyright content. Best Buy recommends customers purchase an "Android box" even though the "legality is still in discussion" and then explains how to "Up your Android box" by installing KODI to "find your favourite shows and movies.", "...without having to pay for a subscription or each individual show." Attached as **EXHIBIT C** - XT912 – Best Buy Canadian blog article 'Cord-cutting 101: How to Live without cable TV'
27. Although the article advises customers to "install KODI" to access "your favourite shows and movies", the vast majority of pirate devices sold by each of the 4Stores have the KODI pirate program pre-installed along with a selection of Official KODI channels that access pirated copyright programs, including pirated Super Channel shows.
28. These 4Stores pirate devices access stolen Super Channel copyright content (and other pirated content) right out of the box, new as purchased from the 4Stores, and without modification.
29. This is clearly documented in my affidavit, including in the attached videos demonstrations of new, off-the-shelf 4Stores pirate devices accessing pirated Super Channel programs within a few minutes of being plugged in and turned on for the first time.

30. The Best Buy blog article promotes the use of pirate devices and the KODI pirate program to access libraries of 'Free TV' - which is the pirated copyright content:
- (b) *"While the legality of Android boxes is still in discussion—for now, they're legal to purchase, but cannot be sold pre-loaded with content—they're touted as a way to access content without having to pay for a subscription or each individual show..."*
  - (c) *"The 'free TV' part of the equation typically comes in on the app end of things, so be careful when selecting an Android box, because they don't all come with the same content and apps downloaded onto them. Some will require a little more work to get them functioning; others may offer access to a pre-existing content library."*
31. Best Buy then goes on to instruct customers to install the KODI pirate program "To up your Android box" and to avoid "a monthly cost".
- (a) *"What's universal about Android box setup is that you'll need to use an app like KODI to stream media. (I personally think that the streaming service approach is a little more seamless, but it does typically come with a monthly cost.)"*
  - (b) *"To up your Android box, make sure you have the KODI app installed; then, search for channels in the add-on section to find your favourite shows and movies."*
  - (c) *"The setup for an Android box... may be difficult the first time around, but it's a hassle that usually only needs to happen once. After 20 minutes of setup and troubleshooting, you can enjoy your cable-free TV at your leisure for as long as you'd like."*
  - (d) *"With the availability of these new services, there's no longer a need for consumers to rely on cable subscriptions to access their media."*
  - (e) *"Getting rid of my cable package is one of the best things that I've done in the last five years. Since cutting the cord, I haven't had a single regret. (It's a great feeling when there's no cable bill at the end of the month.) Living without cable TV is easy and efficient, and it usually translates into seeing even more of the content that you want to watch, not less."*
32. Attached hereto as **EXHIBIT D** XT654 is the Canadian Radio-television and Telecommunications Commission ('CRTC') October 2, 2018 Decision CRTC 2018-384 concerning an 'Application to disable online access to piracy websites' on behalf of the FairPlay Coalition.
33. The CRTC Decision contains the following passages which assist to further understand the damage being done by Copyright Piracy, and how in context of the report, 4Stories Pirate Devices are devastating to Canadian industry and culture:

(a) *While copyright piracy has existed for as long as copyright has, the online environment has facilitated the pirating of digital content, particularly video and audio content, for distribution to a potentially large audience at a low incremental cost.*

(b) *The FairPlay Coalition submitted that piracy: threatens the profitability, viability, and employment generated by the Canadian creative and broadcasting industries; undermines the social fabric of Canada by undermining the creation and legitimate dissemination of Canadian works; and harms trust in, and therefore the development of, the digital economy.*

(c) *The FairPlay Coalition submitted that piracy undermines respect for, and compliance with, the laws of Canada, which have social and economic purposes...*

(d) *The Commission acknowledges that the record of this proceeding demonstrates that there is evidence that copyright piracy results in harm to the Canadian broadcasting system and to the economy in general, but the information provided was not sufficient to quantify the nature and extent of that harm.*

34. I saw on the FairPlay Canada website that the coalition estimates that Canada's cultural industry contributes a total of \$54.6 billion dollars and over 630,000 jobs to the Canadian economy.
35. While the financial costs of content piracy to the Canadian Broadcast and Content Creation Industries would be less in terms of actual dollar value when compared with the USA, a 2019 US Chamber of Commerce study estimates that copyright piracy costs the industry from 11% to 24% of gross revenues. It seems reasonable that the same would be true in Canada.
36. There is no reason to believe that the negative impact of copyright piracy in Canada would be proportionately less than in the USA. To the contrary, there is much reason to believe that Canada's relatively smaller industry would be more vulnerable, hit harder and be less resilient to copyright piracy than the huge American content creation and broadcasting industry.
37. The 2019 US Chamber of Commerce study "IMPACTS OF DIGITAL VIDEO PIRACY ON THE U.S. ECONOMY" states:

(a) *"The U.S. movie and television production and distribution industry is an important component of the U.S. economy, with revenues in 2017 of about \$229 billion. It is also a major job creator, directly supporting 927,000 jobs and 2.6 million in total."*

(b) *"The impact of digital video piracy on revenues of the U.S. content production sector and related industries depends on the extent to which piracy is assumed to displace legal purchases. Based on a broad range of estimates, we find that digital video piracy conservatively causes lost domestic revenues of at least \$29.2 billion and as much as \$71.0 billion annually, representing a revenue reduction between 11% and 24%."*



*(c) Digital video piracy not only causes lost revenues to the U.S. content production sector, it also results in losses to the U.S. economy of between 230,000 and 560,000 jobs and between \$47.5 billion and \$115.3 billion in reduced gross domestic product (GDP) each year. While piracy remains a problem in the U.S., our analysis indicates that most of these losses (223,000 to 541,000 jobs and \$45.7 billion to \$111.1 billion in lost GDP) are due to digital video piracy of U.S. content by non-U.S. residents."*

Source: 2019 US Chamber of Commerce study "IMPACTS OF DIGITAL VIDEO PIRACY ON THE U.S. ECONOMY" Attached as **EXHIBIT E** - XT653  
- Report: Impacts of Digital Video Piracy on the U.S. Economy.

### **Number of Pirate Devices in Canada**

38. As a direct result of my almost two years of daily research, evidence gathering, conversations with Canadians, and first-hand observations, I discovered that a vast amount of pirated copyrighted content is available to Canadians without any payment at all – except for the initial purchase of a pirate device. Thus, there is great demand for pirate devices.
39. A London Drugs manager informed me that some apartment building owners even install London Drugs pirate devices to attract tenants.
40. I verily believe that several million pirate devices have been sold in Canada. Although accurate 4Stores sales figures could be known during discovery in this case, I verily believe that as four of the largest electronics retailers in Canada, the 4Stores have been responsible in measure for the proliferation of pirate devices in Canadian homes and businesses.
41. Even though we do not know at this moment how many pirate devices the 4Stores have sold to Canadians, we can make some observations generally about the number of pirate devices in Canada.
42. Statistics Canada reported in the 2018 Canadian Housing Survey that there were some 15 million households in Canada. In 2017, networking solutions company Sandvine released a report that about 7 percent of Canadian homes have one or more Android / KODI pirate devices. The simple math based upon only one pirate device in each of the 7% of households equals one million, fifty-thousand pirate devices in Canada in 2017.
43. However, the 2017 MUSO Global TV Piracy Insight Report showed a measurable increase in piracy activity by Canadians with Canada moving from #10 to #8 worldwide in terms of piracy visits.
44. That information is almost three years old, and with the ubiquity of pirate devices as I found in the last two years, I believe it is reasonable to estimate that there are now several million pirate devices installed in Canadian homes and businesses.
45. Further, various 4Stores personnel informed me that they have more than one pirate device in their homes, as do some of their family members, friends and customers. All of these factors combine to convince me that the estimate based upon one pirate device per home in 2017 is undoubtably now outdated and far surpassed.

46. Attached as exhibits are: **EXHIBIT F** - XT650 - Statistics Canada 2018 Households Report, **EXHIBIT G** - XT651 - MobileSyrup Article: Free TV Android boxes in 7 percent of Canadian homes, and **EXHIBIT H** - XT652 - MUSO TV Piracy Insight Report - 2017 Canada.

#### **Costs of Copyright Piracy – More than money**

47. The affidavit of Super Channel President and CEO Donald McDonald also filed in this legal action documents that pirate devices cause lost tax revenues, lost Canadian jobs, and also damage our unique national culture and values.
48. The 2019 US Chamber of Commerce study "IMPACTS OF DIGITAL VIDEO PIRACY ON THE U.S. ECONOMY" (Exhibit E quoted above) indicates that Content Piracy has caused the loss of hundreds of thousands of jobs in the USA.
49. In a 2017 presentation to the United Kingdom's Intellectual Property Office about Illicit IPTV Streaming Devices, Canada's BCE Inc., Quebecor Media Inc., and Rogers Communications Inc. stated:

*(a) "This (copyright piracy) causes significant harm to Canadian media and broadcast distribution companies. First, it makes it more difficult for content creators to sell the products they produce, making it less likely that they are produced in the first place. Similarly, it makes it impossible for a rightsholder to effectively monetize the rights that they purchase, making it less likely that the investment is made in bringing the content to a legitimate television station or OTT service in the domestic market. Finally, it causes a permanent loss of customers for legitimate broadcast distribution companies, reducing their ability and incentive to invest in broadband networks and other broadcast distribution infrastructure, as well as new and innovative products and services."*

#### **Normalization & Social Acceptance of Copyright Piracy**

50. Although I cover the Normalization of Copyright Piracy in more detail in a later section of my affidavit 'Culture of Stealing', it is important to briefly consider that there has been a Normalization and Social Acceptance of Copyright Piracy that has entered mainstream Canadian culture and values.
51. With the 4Stores reach, brand credibility, influence and continuing actions promoting and propagating copyright piracy, the defendants are normalizing Copyright Piracy in Canadian society.
52. It was stated in a 2007 Canadian House of Commons report that normalization of stealing copyrighted content creates changes to Canadian culture far beyond just the broadcasting and content creation industry – because normalization of such illicit behaviour impacts and influences other areas of society.
53. As the May 2007 Canadian House of Commons report noted "*Piracy (of Intellectual Property) is a form of crime with high profit margins and low risk of being caught or receiving a severe penalty.*"